

STATE OF CALIFORNIA
DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION

TEXT OF PROPOSED REGULATIONS
UNDER THE DEBT COLLECTION LICENSING ACT

TITLE 10. INVESTMENT

Chapter 3. Commissioner of Financial Protection and Innovation
Subchapter 11.3. Debt Collection Licensing Act.
(Additions shown by underline)

MODIFIED: June 17, 2024

(Additions shown by double underline; deletions shown by double strikethrough.)

SECOND MODIFIED TEXT: September 11, 2024

(Additions shown in italics; deletions are shown in italics, with a strikethrough.)

Article I. Definitions.

1. Section 1850 is amended to read:

§ 1850. Definitions.

The following terms used in subchapter 11.3 of title 10 shall have (unless the context indicates otherwise) the following meanings:

(a) "Affiliate" means any person controlling, controlled by, or under common control with, the specified person, directly or indirectly, through one or more intermediaries.

"Affiliate" includes an affiliated company.

(b) "Applicant" means any person, including any of its affiliates, who applies for a license under the Debt Collection Licensing Act. An affiliate who is not applying for a license is not an applicant for purposes of licensure under the Debt Collection Licensing Act.

(c) "Branch office" means a location other than the applicant's or licensee's principal place of business identified in a license application or an amended application if activity related to debt collection occurs at the location and the location is held out to the public as a business location or money is received at the location or held at the location. For purposes of filing a Form MU3, holding a location out to the public includes receiving postal correspondence from the public at the location, meeting with the public at the

location, including the location on business cards, letterhead, or any other correspondence, including signage at the location, or any other representation to the public that the location is a business location of the applicant or licensee.

(d) "Commissioner" means the Commissioner of Financial Protection and innovation.

(e) "Control" means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. A person who, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the then outstanding voting securities issued by another person is presumed to control such other person. For purposes of this subchapter, the Commissioner may determine whether a person in fact controls another person.

(f) "Debt buyer" means a person or entity that is regularly engaged in the business of purchasing charged-off consumer debt for collection purposes, whether it collects the debt itself, hires a third party for collection, or hires an attorney-at-law for collection litigation. "Debt buyer" does not mean a person or entity that acquires a charged-off consumer debt incidental to the purchase of a portfolio predominantly consisting of consumer debt that has not been charged off.

(g) "Debt Collection Licensing Act" means California Financial Code section 100000 et seq.

(h) "Debt collector" has the same meaning as set forth in subdivision (j) of Section 100002 of the Financial Code.

(i) "Form MU1" means the uniform licensing form, entitled "NMLS Company Form," developed by the Nationwide Multistate Licensing System & Registry and used to provide information on a company or sole proprietor license applicant. Version 11.0, dated 09/12/15, is hereby incorporated by reference in its entirety.

(j) "Form MU2" means the uniform licensing form, entitled "NMLS Individual Form," developed by the Nationwide Multistate Licensing System & Registry and used to provide information on an individual who directly or indirectly owns or controls the activities of the applicant, branch office, including principal officers, directors, and other individuals specified on Form MU1 or Form MU3. Version 9, dated 9/12/2016, is hereby incorporated by reference in its entirety.

(k) "Form MU3" means the uniform licensing form, entitled "NMLS Branch Form," developed by the Nationwide Multistate Licensing System & Registry and used to provide information on branch offices. Version 10, dated 03/31/2014, is hereby incorporated by reference in its entirety.

(l) "Individual" means a natural person.

(m) "Licensee" means any person who is licensed under the Debt Collection Licensing Act. "Licensee" includes the person named on the license and any person listed on the license.

(n) "NMLS" means the Nationwide Multistate Licensing System & Registry.

(o) "Principal officers" means the president, chief executive officer, treasurer and chief financial officer and any other officer with direct responsibility for the conduct of the applicant's debt collection activities in this state.

(p) For purposes of subdivision (a) of Financial Code section 100020, "net proceeds generated by California debtor accounts" means the amount retained by a debt collector from its California debt collection activity.

(1) For the California debt collection activity of a debt buyer as defined in Civil Code section 1788.50, this is equal to the amount ~~it~~ the debt buyer collects on a debt minus the prorated amount it paid for that debt, before deducting costs and expenses.

(2) For the California debt collection activity of an owner ~~a purchaser~~ of debt who is not a debt buyer under paragraph (1) of this subdivision ~~that has not been charged off or debt that is not in default~~, this is equal to the amount ~~it~~ the owner receives in fees and other charges from debtors that it would not have received had the debt been paid on time ~~collects on a debt minus the prorated amount it paid for that debt~~, before deducting costs and expenses.

(3) For ~~a third party collector~~ all other California debt collection activity ~~debt collectors~~, this is equal to the amount a debt collector receives from its clients, regardless of fee structure, before deducting costs and expenses. For purposes of this section, "client" means the company on whose behalf the ~~third party~~ debt collector has been contracted to collect on an account.

(4) *The total dollar amount of net proceeds under paragraph (a)(5) of Financial Code section 100021 is the sum of the net proceeds for each category of California debt collection activity in paragraphs (1) through (3) of this subdivision.*

~~(4) For a first party collector, this is equal to the amount it receives in fees and other charges from debtors that it would not have received had the debt been paid on time, before deducting costs and expenses. For purposes of this section, a first party collector means a person or entity that collects a debt owed directly to it.~~

Note: Authority cited: Section 100003, Financial Code. Reference: Section 100020, Financial Code.

2. Article 6 is adopted to read:

Article 6. Annual Reports.

Note: Authority cited: Section 100003, Financial Code. Reference: Sections 100003 and 100021, Financial Code.

3. Section 1850.70 is adopted to read:

§1850.70. Annual Reports.

(a) The annual report required by Financial Code section 100021 shall be submitted by each licensee with an attestation to its accuracy and completeness signed by a principal officer or sole proprietor of the licensee. The report must be submitted electronically.

(b) "Preceding year" means calendar year, January 1 through December 31.

(c) For purposes of Financial Code section 100021, subdivision (a)(1), if a California debtor has multiple accounts, each account shall be counted separately.

(d) The total number of California debtor accounts collected on in the preceding year shall be the sum of paragraphs (1), (2) and (3) of this subdivision. Individual numbers for paragraphs (1), (2) and (3) are not required to be reported. ~~the following:~~

(1) The total number of California debtor accounts collected in full.

(2) The total number of California debtor accounts for which collection was attempted collected on that were resolved for less than the full amount of the debt.

(3) The total number of California debtor accounts for which collection was attempted collected on where payments were made but less than the full amount of the debt was collected and a balance remains due.

(he) The report shall also include the total number and dollar amount of California debtor accounts for which collection was attempted, but not payments were successfully collected or resolved, during the preceding calendar year. This number shall not include the California debtor accounts reported in subdivision (d), paragraphs (1) through (3). The dollar amount shall be calculated as of December 31 of the preceding year.

(f) The "total dollar amount of California debtor accounts purchased in the preceding year" means the total amount owed by all California debtors on all California accounts purchased by a licensee in the preceding year before any fees or other charges are added by the licensee.

(g) The "face value dollar amount of California debtor accounts in the licensee's portfolio in the preceding year" means the total amount owed by all California debtors on all California accounts, as of December 31 of the preceding year, before any fees or other charges are added by the licensee, regardless of when the accounts entered the portfolio.

(h) In addition to the requirements of Financial Code section 100021, the report shall include the following:

(1) The number of California debtor accounts in the licensee's portfolio as of December 31 of the preceding year. If an account has more than one debtor obligor, the account shall be counted as one California debtor account.

(2) The number of California debtors in the licensee's portfolio as of December 31 of the preceding year. If a California debtor account has more than one debtor, only one debtor shall be counted.

Note: Authority cited: Section 100003, Financial Code. Reference: Section 100021, Financial Code.